

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 24, 2007

**STATE OF TENNESSEE v. JESSE CARL PAGE, SR.**

**Appeal from the Circuit Court for Warren County**  
**No. M-10554     Larry B. Stanley, Jr., Judge**

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**No. M2007-00485-CCA-R3-CD - Filed February 13, 2008**

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The defendant, Jesse Carl Page, Sr., pled guilty to driving under the influence (DUI), T.C.A. § 55-10-401(a), a Class A misdemeanor, and received a sentence of eleven months and twenty-nine days, suspended after forty-eight hours in confinement. He reserved on appeal a certified question regarding the legality of the vehicle stop that led to his arrest. We agree with the trial court that the stop was legal, and we affirm the judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. McLIN, JJ., joined.

Robert S. Peters, Winchester, Tennessee, for the appellant, Jesse Carl Page, Sr.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; Lisa Zavogiannis, District Attorney General; and Mark E. Tribble, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The defendant was arrested after being stopped while driving in a rural area of Warren County. He was found to be intoxicated and to have a blood alcohol content of over .08 percent. The defendant challenges the legality of the vehicle stop that led to his arrest and reserved for appeal the following issue: “Whether there were sufficient and articulable facts to justify the stop of the defendant’s vehicle.”

At the motion to suppress hearing, Warren County Sheriff’s Deputy Kevin Murphy testified that he was on patrol on August 12, 2005, from 6:30 a.m. until 7:00 p.m. He said that at 6:45 p.m., he turned onto Crisp Springs Road and saw the defendant’s black Corvette driving very slowly and “weaving side-to-side.” He estimated the car was traveling twenty to thirty miles per hour and said that although he did not think there was a posted speed limit in the area, forty-five miles per hour

was the general speed on back roads. He said he followed the Corvette for about three minutes before pulling it over and that during that time, no cars came between his and the Corvette. He said he had a camera on his car and began recording the Corvette “a little ways” after he began following it. The videotape was played in court, and Deputy Murphy testified that it showed the defendant swerving right into some grass, driving “heavy” on the right shoulder of the road, and crossing the double yellow line on the other side of the lane. He said that when the car swerved left and crossed the double line, he became worried about the safety of other cars and activated his blue lights. He said the defendant pulled over “fairly quickly” after the blue lights activated. He said that, based on the defendant’s driving, he suspected the defendant of being under the influence of drugs or alcohol and that the defendant was a danger on the road.

On cross-examination, Deputy Murphy testified that the defendant may have only crossed the double yellow line once. He said that he stopped the defendant based on the defendant’s weaving and slow speed and that he did not observe the defendant violate any traffic laws such as running a stop sign or speeding. He acknowledged that it was not illegal to drive thirty miles per hour but said that in his training, he was taught that slow driving could be a sign of impairment or DUI. He said he was not sure of the car’s exact speed, because he did not remember checking his own speedometer. He said the car could have been traveling thirty-five miles per hour, but he did not think it was and rather thought it was traveling closer to twenty miles per hour. He said he stopped the defendant because he feared the defendant was going to kill someone.

The video shows the back of a black Corvette traveling on a straight two-lane road during daylight hours. In the beginning, the Corvette drives on the right side of its lane, and its right tires drive on or over the right white line of the lane several times. It travels toward the left side of the lane and weaves within its lane for a short period. About one minute into the video, the car’s left tires cross the double yellow line that separate the two lanes of traffic and stay over the double yellow line for a few seconds. Shortly thereafter, the car stops in front of the police cruiser.

The trial court ruled that the stop was justified, finding:

This is a relatively close call; however, taking all the factors, together, the speed, low 20’s, 20 to 30 but pushing at some points 20 miles an hour below the speed limit, getting over on the right shoulder of the road on more than one occasion, then crossing back over into the oncoming lane, crossing the double yellow line, that with what we saw in the video tape along with what the deputy said was very similar to what he saw before he turned his lights on and all of that taken as a whole does cross the line as far as giving the officer probable cause to believe or reasonable suspicion that the defendant was under the influence. As I said, it’s a close call but . . . [a]ll that together gave reasonable suspicion for at least an investigatory stop.

The defendant contends that there were not sufficient specific and articulable facts that he had committed or was about to commit a criminal offense to justify the investigatory stop. The state counters that the evidence does not preponderate against the trial court's findings and that we should affirm the judgment of the trial court.

A trial court's factual findings on a motion to suppress are conclusive on appeal unless the evidence preponderates against them. State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996); State v. Jones, 802 S.W.2d 221, 223 (Tenn. Crim. App. 1990). Furthermore, questions about the "credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." Odom, 928 S.W.2d at 23. The application of the law to the facts as determined by the trial court is a question of law which is reviewed de novo on appeal. State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

The Fourth Amendment to the United States Constitution and article 1, section 7 of the Tennessee Constitution protect against unreasonable searches and seizures. See State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997). An automobile stop constitutes a seizure within the meaning of these constitutional provisions. Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 450, 110 S. Ct. 2481, 2485 (1990); State v. Pulley, 863 S.W.2d 29, 30 (Tenn. 1993); State v. Binion, 900 S.W.2d 702, 705 (Tenn. Crim. App. 1994). The police may stop a vehicle if they have reasonable suspicion based upon specific and articulable facts that an occupant is violating or is about to violate the law. See United States v. Brignoni-Ponce, 422 U.S. 873, 881, 95 S. Ct. 2574, 2580 (1975); State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992); Hughes v. State, 588 S.W.2d 296, 305 (Tenn. 1979). In determining whether an officer's reasonable suspicion is supported by specific and articulable facts, "a court must consider the totality of the circumstances—the entire picture." State v. Moore, 775 S.W.2d 372, 377 (Tenn. Crim. App. 1989).

In the present case, the arresting officer testified that he stopped the defendant's vehicle after following it for about three minutes and observing the defendant travel at an unusually slow speed, weave, and cross the double yellow line into the opposing lane of traffic. He said these factors led him to believe that the defendant was a danger to himself and others while on the road. The trial court, after viewing a video of the defendant's driving and accrediting the officer's testimony, agreed and ruled that the totality of the circumstances justified the stop.

The defendant cites three cases which he claims are analogous and support his argument that the stop of his vehicle was not justified. In State v. Richard Adam Hannah, No. E2005-02833-CCA-R3-CD, Hamilton County, slip op. at 4-5 (Tenn. Crim. App. June 6, 2007), this court held that a vehicle stop was not justified based solely on evidence that the defendant was driving at a lower than usual speed, particularly when the reduced speed was not impeding the normal and reasonable speed of traffic. In State v. Binette, 33 S.W.3d 215, 219-220 (Tenn. 2000), our supreme court held that a vehicle stop was not justified when the evidence showed only that the defendant's vehicle moved laterally within its lane, that its movements were not pronounced, and that the defendant was otherwise driving properly. In State v. Alorra D. Puckett, No. E2002-01959-CCA-R3-CD, Hamilton County, slip op. at 3 (Tenn. Crim. App. 2003), this court relied on Binette in holding that a vehicle

stop was not justified when the evidence showed no erratic driving and only the defendant's vehicle weaving within its lane. As this court in Alorra D. Puckett explained, "a momentary lapse in a motorist's driving, such as slight drifting within the lane of travel, driving on the white line, or briefly leaving the lane of travel, does not, standing alone, constitute reasonable suspicion for a traffic stop." Id. (citing Binette, 33 S.W.3d at 220; State v. Smith, 21 S.W.3d 251,258 (Tenn. Crim. App. 1999); State v. Ann Elizabeth Martin, No. E1999-01361-CCA-R3-CD, Hamilton County (Tenn. Crim. App. 2000)).

We agree with the state that the present case is distinguishable from those cases. The defendant's stop was not based solely on Deputy Murphy's observation that he was driving unusually slowly or that he was weaving within his lane. Rather, Murphy observed these facts, along with the defendant's vehicle crossing both the white line on the right side of his lane and the yellow line on the left side. Deputy Murphy testified that he did not make the decision to stop the defendant until the defendant crossed into the opposing lane of traffic. We have held that a defendant's crossing the double yellow line separating opposing lanes of traffic justifies a vehicle stop. State v. Harold Russell Gregory, No. M2002-01461-CCA-R3-CD, Davidson County, slip op. at 7 (Tenn. Crim. App. July 29, 2003). We conclude that the stop of the defendant's car was justified.

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

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JOSEPH M. TIPTON, PRESIDING JUDGE